

Remarks

Claims 16, 21, 22, 25-28, 39, 43, 44, 47, 48, 55, 59 and 63 have been amended and claims 34, 37 and 67-69 have been canceled. New claims 70-72 have been added. Review and reconsideration in light of this Amendment and the comments below are respectfully requested.

Claims 55, 59 and 63 are rejected for failing to particularly point out and distinctly claim the invention. The undersigned would like to thank the Examiner for the courtesy of a telephone conversation on July 14, 2005. During that conversation the undersigned submitted that the objected-to claim limitation is not indefinite, in that the claim limitation simply provides a strength/unit area rating. Because the claim limitation is expressed in lbs/square feet, once the exact nature by which the load is applied is known, it can be easily determined whether the claimed ramp can support the load. During the telephone conversation, the Examiner indicated that this position may have merit, and indicated that if Applicant can provide sufficient evidence showing third-party usage of deck ratings in a manner similar to that of claims 55, 59 and 63, then the objection may be withdrawn.

Accordingly, enclosed herein are various web printouts showing deck strength expressed in psf. For example, the web page http://shipwanted.com/ShipSaleAdView.cfm?ref_id=1320&pricemin=&pricemax= (copy enclosed) shows a deck strength for a barge expressed as "1,066 psf." The web page <http://www.globalsecurity.org/military/systems/ship/cape-h.htm> (copy enclosed) specifies a ship deck strength as "41 pounds per square foot."

The paper entitled "Comparison of Principal Characteristics; SMR/PRV/FRV-40," (copy enclosed) which is available at the web page <http://www.SFOS.UAF.edu/ARRV/ConceptDesign/Appendices/H/PM01CompareMatrix.pdf> refers to a ship deck which can support a loading of "up to 1,200 lbs/sq foot." The web page <http://www.globalsecurity.org/military/library/policy/army/fm/5-480/Ch11.htm> (copy enclosed) specifies (at the bottom of page 1 - top of page 2) that the barges discussed therein "support a uniform live deck-load of 500 to 600 pounds per square foot." Finally, the web page <http://www.cbd-net.com/index.php/search/show/809249> (copy enclosed) refers to a vessel having a deck which can support a uniformly distributed load of "525 psf."

Thus, it is submitted that the web page printouts provide evidence of a standard use of deck ratings in a matter similar to that of claims 55, 59, 63. In addition, it is submitted that specifying a deck strength in a force/area manner is the most meaningful way to specify the strength of a deck. It can be difficult, if not impossible, to simply provide a total weight that a deck can support, since this weight limitation will typically depend on the distribution of the applied load. Thus it is submitted that claims 55, 59 and 63 are not indefinite, and it is requested that the rejection thereto be withdrawn.

Claims 55, 59 and 63 have been amended to remove the phrase "at least" to address the rejection of those claims as failing to comply with the written description requirement.

However, in construing those claims, it should be understood that the 1,750 pounds per square foot specified therein is the lower limit of the deck strength specified therein. For example, if a deck can support 2,000 pounds per square foot, such a deck would fall within the scope of the deck strength specified in claims 55, 59 and 63 since a deck that can support 2,000 pounds per square foot must inherently be able to support 1,750 pounds per square foot.

Claim 21 has been amended to correct its dependency. Claim 21 has also been amended to specify that the reach stacker recited therein is a supplemental reach stacker to distinguish the unloading reach stacker (claim 21) from the loading reach stacker recited in claim 16.

Claims 16-19, 21-23, 25-28, 32, 33, 55, 57, 59, 61, 63 and 65 are rejected as defining obvious subject matter over U.S. Pat. No. 4,400,130 to Anttila in view of U.S. Pat. No. 3,794,196 to Terho. Independent claim 16 has been amended to include the subject matter of claim 37, which specifies that the vehicle is a reach stacker, and claim 37 has been canceled. Claim 37 is not rejected over the Anttila reference, and therefore it is submitted that amended claim 16 now defines over the Anttila reference.

Similarly, independent claim 25 has been amended to include the subject matter of claim 34, which is not rejected over the Anttila reference, and claim 34 has been canceled. Finally, independent claim 16 has been amended in an analogous manner.

In addition, claims 67-69 are not rejected over the Anttila reference. The subject matter of each of claims 67, 68 and 69 have been incorporated into the corresponding independent

claim, and claims 67-69 have been canceled. Thus it is submitted that the outstanding rejections over the Anttila reference are overcome.

Claims 16-19, 27, 28, 33, 37-40 and 42-44 are rejected as defining obvious subject matter over U.S. Pat. No. 4,325,667 to Freeman in view of the Kalmar web site (cited in the Office action of April 3, 2003) and in view of U.S. Pat. No. 3,691,595 to Backteman et al.

The rejections of the broader independent claims are traversed for the reasons addressed in Applicant's previous amendment and remarks, but such reasons are not fully reproduced here as it is believed Applicant's position in this regard has been made clear.

However, it is briefly noted that the Office action (at page 16) noted that the broadest claims do not recite a reach stacker. By this Amendment, the independent claims have been amended to recite a reach stacker. Thus it is submitted that the independent claims further distinguish over the Freeman reference on the basis that the Freeman reference only discloses forklifts, and does disclose, teach or suggest the use of reach stackers.

As previously noted, the great bulk and increased weight of reach stackers typically prevent them from being driven onto barges since the reach stack can cause listing/tilting of the barge, as well as causing damage to the ramp and deck of the barge. This is not generally an issue with forklifts, which are much smaller and can only typically carry much smaller loads than reach stackers. In addition, the gripping portion of a reach stacker provides an advantage as it allows the reach stackers to easily grip containers by their corner castings, access and unload vertical stacks of containers, etc. while on the barge.

As previously argued the Applicant's invention involves significant "outside-the-box" thinking in that reach stackers are not known to have been previously driven onto barges, but were instead considered purely land-based vehicles. Driving reach stackers onto barges creates many issues and require modification to the barges and the entire loading/unloading process. It is respectfully submitted that the Office's view of obviousness results from hindsight once the nature of Applicant's invention is known, given that there is simply no "linking" reference that discloses, teaches, or suggests the use of reach stacker *on a barge or vessel* in any manner. The

Office action only cites, separately, to reach stackers, and then to a barge, and concludes it would have been obvious to use the two together in the manner claimed in this application.

In addition, as previously argued, once all of the modifications and substitutions proposed in the Office action are instituted, essentially no component of the Freeman reference (the primary reference) remains in place. The Office action proposed drastic and significant restructuring of the system of the Freeman reference such that the end result is essentially unrecognizable compared to the original disclosure of Freeman. Finally, as previously argued, various secondary considerations (including commercial success) are also believed to support the patentability of the invention. Thus it is submitted that the broadest independent claims are allowable.

New claim 71 depends from claim 22 and specifies that the placing step includes placing each container on a vehicle. Support for this amendment can be found, for example, at page 4, lines 9-12 of this application.

New claim 70 depends from claim 16 and specifies that the lifting and transporting step includes individually lifting each container off of a tractor-trailer or a rail car by the reach stacker. New claim 72 depends from claim 25 and includes similar subject matter. Support for these amendments can be found at page 8, lines 1-13, wherein it is disclosed that containers are delivered to a marine terminal by tractor-trailer rigs, or by rail, and that a reach stacker lifts each container from its location in the marine terminal.

At page 11, the Office action takes the position that claims 55-66 do not provide any further limitation on the claimed method, but instead provide apparatus limitations. However, this position is respectfully traversed. Claims 55-66 specifically indicate that they are adding an additional method step. The Office action may take issue with the fact that much of claims 55-66 include structural limitations. However, it is submitted that claims 55-66 do, nevertheless, provide meaningful limitations on the claimed method.

It is submitted that nearly any method claim will inherently include some structural limitations, and this is not improper. As an example, the first step of claim 16 of this application may be considered. The only pure "method" step of claim 16 is the word "selecting" or perhaps

the phrase "selecting a plurality of containers." The remainder of this step of claim 16 arguably provides apparatus limitations: "[the plurality of containers] being adapted to contain and protect freight in a marine environment, each container having a set of outer walls defining an inner volume, and having freight loaded therein." Similarly, the third step of claim 16 specifies that the reach stacker "includes a body portion and a gripping portion including a spreader attachment, said gripping portion being capable of being raised and lowered, rotated and inclined relative to said body portion."

The Office has not, thus far, taken any issue with respect to these arguably "apparatus" limitations of claim 16, as well as the remaining pending claims. Claims 55-66 merely provide additional method steps with structural limitations included therein, in the manner of nearly any standard method or process claim. Indeed, as noted at MPEP §2116.01 "All limitations of the claim must be considered when weighing the differences between the claimed invention and the prior art in determining the obviousness of a process or method claim" (emphasis in original). Thus, it is submitted that claims 55-66 do in fact provide further limitations upon the claimed method which are entitled to consideration.

At page 16 of the Office action, it is indicated that the Applicants' traversal of statements of old and well-known subject matter are inadequate under MPEP §2144.03(c). As an initial matter, with respect to the "deck strength" limitation, the most recent final Office action takes the position that a deck strength of "750 psf" is old and well known. However, none of the claims of this application specify a deck strength of 750 psf. Instead, the pertinent claims (claims 55, 59 and 63) claim a deck strength of 1,750 psf. Accordingly, because the final Office action did not take the position that the claimed deck strength was old and well known, it is submitted that the subject matter of those claims cannot be deemed to be admitted as prior art.

Furthermore, as outlined in greater detail below it is submitted that: 1) the final Office action did not make a proper showing of official notice; 2) in its Preliminary Amendment, Applicant did, in fact, properly traverse any assertion of official notice; and 3) Applicant still has the opportunity to properly traverse any assertion of official notice, which is done by this Amendment.

Initially, as noted in MPEP §2144.03, any rejection based upon official notice should be "judiciously applied." MPEP §2144.03 also provides instructions with respect to a finding of official notice after a final Office action, noting that the "circumstances should be rare" when it is proper to make a finding of official notice in a final rejection. However, the Office action of November 16, 2004, in which the alleged taking of Official Notice was made, was a final Office action.

MPEP §2144.03 also notes that official notice unsupported by documentary evidence should only be taken when the facts asserted are well known, or when they are common knowledge and are capable of instant and unquestionable demonstration as being well known. MPEP §2144.03 also specifies that "Ordinarily, there must be some form of evidence in the record to support an assertion of common knowledge." However, in this case it is submitted that the alleged findings of official notice are not well known, are not common knowledge, and are not capable of instant unquestionable demonstration as being well-known. It is also submitted that there is no evidence in the record of this application sufficient to support the alleged finding of alleged Official Notice.

MPEP §2144.03 also notes that the Office action must provide "specific factual findings predicated on sound technical and scientific reasoning" to support the assertion of official notice. However, the final Office action does not provide any such specific factual findings. For example, with respect to the strength of the deck, the final Office action took the position that it is notoriously old and known to make a deck with sufficient strength to support 750 psf (sic). The final Office action then goes on to say that it "would have been obvious" to one of ordinary skill in the art to do so to maximize the payload which can be carried on the deck. However, this sentence takes a position with respect to alleged "obviousness" of the fact sought to be noticed and does not provide any *technical reasoning* to support a conclusion of *common knowledge*. Instead, a statement of obviousness refers to speculation as to what one of ordinary skill in the art might do but does not support a conclusion of common knowledge.

Similar statements are made with respect to allegations of official notice with respect to the pointed bow, beam-to-length ratio, and the ramp length. In each of these cases, the final

Office action summarily takes the position that the subject matter is notoriously old and well-known, and then includes a statement of "obviousness." However, at statement of alleged obviousness relates to the patentability of an invention and does not support a conclusion of common knowledge. For example, an claim limitation can be obvious to one of ordinary skill in the art, but this does not necessarily mean that the claim limitation ever actually existed or was actually used, let alone that the claim limitation is "unquestionably...well known."

It is also noted that the final Office action does not appear to include any statement of, or reference to, "Official Notice." Due to the rather informal nature in which the final Office action referred to alleged "old and well known" features, it was unclear to Applicant whether the final Office action was attempting to make a showing with respect to official notice. The term "Official Notice" does not appear to have been used anywhere in the final Office action. For this reason, in Applicant's response, it was noted that "to the extent official notice" was taken, such official notice was traversed. It is only in the most recent Office action where the term "Official Notice" is now used.

Thus, in sum, it is submitted that because the alleged official notice was taken in the final Office action, because the alleged official notice did not cite to any evidence in the record of this case, and because the alleged findings of official notice were not sufficiently supported, it is submitted that the alleged official notice with respect to the subject matter of at least claims 54-66 has not been properly shown.

In addition, it is submitted that Applicant has, in fact, properly traversed the alleged findings of official notice. MPEP §2144.03(C) specifies that in order to properly traverse an allegation of official notice, the Applicant must "specifically point out the supposed errors in the Examiner's action which would include stating why the noticed fact is not considered to be common knowledge or well known in the art." That section of the MPEP provides some guidance as to what is *not* sufficient to traverse an allegation of official notice by noting that a general allegation that the claims define a patentable invention, without referring to the assertion of official notice, is inadequate.

However, in this case, in each case of alleged official notice the Applicant did not merely allege that the claims define a patentable invention. Instead, Applicant very clearly and specifically indicated that each instance of alleged official notice was not considered to be common knowledge or was not well known in the art.

For example, with respect to the deck strength of 1,750 pounds per square foot, Applicant noted that the claimed deck strength is several times the strength of the deck of a commercial roll-on roll-off vessel. Applicant also pointed out that this assertion was included at page 5, lines 12-14 of this application. Thus, by clearly noting that the claimed deck strength is not shown in standard vessels, this statement constitutes a statement that the alleged notice of fact is "not considered to be common knowledge or well-known in the art."

It is submitted that in order to properly show that a fact is *not* well-known, an applicant can point to contrary facts, which Applicant in fact did. Indeed, statements of this type appear to be the only way in which an allegation of official notice can be traversed. This is simply no other practical type of proof the undersigned to think of to prove a "negative" (i.e to prove something is *not* well-known) besides pointing to contrary facts. This is the very course of action Applicant has pursued.

With respect to the beam-to-length ratio, Applicant similarly pointed out that the beam-to-length ratio specified in the claims is approximately double that of a typical ocean going vessel. This is noted at page 5, lines 18-19 of the application. Thus it is submitted that this reference to contrary facts, by itself, provides sufficient traversal of the alleged finding of Official Notice. Applicant also pointed to page 5, lines 17-24 of the application as supporting this position. Again, these statements are a direct traversal of the alleged official notice and clearly represent a statement as to why the allegedly noticed fact is not considered to be common knowledge or well known in the art.

With respect to the "pointed bow" limitation, Applicant argued that the pointed bow allows greater towing speeds, as is specified at page 5, lines 19-23 of this application. Applicant also specified that the Friedman reference did not disclose a pointed bow. By referring to faster towing speeds, the natural inference is that because the towing speed is faster the other

comparative vessels do not have a pointed bow, thus pointing to facts contrary to the alleged Official Notice. Further, page 8 lines 24-26 of the specification notes that "The pointed bow 24 of the barge 12 enables the tow boat to tow the barge at a relatively greater speed *than conventional straight-bowed barges*" (emphasis added). Thus the specification notes that conventional barges are "straight-bowed" which contravenes any finding of alleged Official Notice in this regard.

With respect to the "ramp length" limitation, the Applicant noted that this limitation was not shown in the prior art and requested that the Office provide evidence that discloses the subject matter, provide a motivation to combine the references, etc. in the well-known manner of obviousness rejections. At page 6 line 27 – page 7 line 2 of this application, it is noted that the length of the ramp (combined with enhanced traction capabilities of the ramp) enables a reach stacker to access the barge in various tidal and load conditions (i.e. even when the barge is unloaded at high tide).

In addition, it is submitted that Applicant has not yet had an opportunity to traverse the alleged assertions of official notice. Under MPEP §2144.03B, an applicant is entitled to challenge an assertion of official notice in the "next reply" after the Office action including the assertion of official notice. As noted earlier, the assertions of official notice were included in the final Office action that was mailed November 16, 2004. After the final Office action, Applicant submitted an Amendment After Final on January 18, 2005. However, this Amendment was not entered (see Advisory Action mailed on February 9, 2005). Applicant then submitted another Amendment After Final that was mailed on February 25, 2005. However, this Amendment, too, was not entered (see Advisory Action of April 7, 2005).

While Applicant did file a Preliminary Amendment which preliminarily addressed the rejections at the time of filing an RCE, it is submitted that the Preliminary Amendment was an accompaniment to the RCE and should not be considered to constitute "response" to an Office action for the purposes of traversing a finding of Official Notice.

With respect to the 1,750 pounds per square foot limitation, Applicant has provided various web page printouts (described above in the context of the 35 U.S.C. §112 rejections)

which disclose vessels having a deck strength below 1,750 per square foot. In addition, as previously argued, and as specified at page 5, lines 12-14 of the application, the claimed deck strength is several times the strength the deck of a commercial roll-on roll-off vessel. Thus, it is submitted that the official notice with respect to this claim limitation is in error and the alleged notice of fact is not considered to be common knowledge or well known in the art. The allegedly noticed fact is not considered to be common knowledge or well-known in the art due to these contrary disclosures. A reference supporting the alleged Official notice in this regard is requested.

With respect to the beam-to-length ratio limitation, Applicant hereby provides various web page printouts which disclose a beam-to-length ratio outside that claimed. In particular, the web site http://www.armfield.co.uk/na48_datasheet.html (copy enclosed) discloses a hull having a length-to-beam ratio of 8:1. The web site <http://cma.soton.ac.uk/HistShip/rep016.htm> (copy enclosed) refers to a model of ships having a beam-to-length ratio of about 1:5 (thus a beam-to-length ratio of 5:1). The web page <http://www.oneoceankayaks.com/kayakpro/SLTtech.htm> (copy enclosed) discloses a kayak having a length-beam ratio of 8.65. Finally, web page <http://www.210class.com/the210.htm> discloses a vessel having a 5:1 length-to-beam ratio. Thus, it is submitted that the official notice with respect to the beam/length ratio is in error and the alleged notice of fact is not considered to be common knowledge or well known in the art.

With respect to the "pointed bow" limitation, Applicant has argued that the pointed bow allows greater towing speeds, as specified at page 5, lines 19-23. The application, at page 5, lines 19-22, specifies that "the hull 22 of the barge 12 *differs from traditional barge design* in that it includes a pointed bow" (emphasis added). Thus it is submitted that the application itself provides a sufficient traversal of the alleged finding of Official Notice.

It is also noted that the Friedman reference does not disclose a pointed bow. In addition, Applicant hereby provides photographs from various web pages printouts (<http://home.att.net/~bevbruce/barge4.html>; <http://www.ecy.wa.gov/programs/spills/incidents/portlandbarge/plbargebase.htm>; and <http://www.mtsnac.org/docs/RMR.htm>) all of which disclose barges without a pointed bow. U.S. Pat. No. 6,125,780 to Sweetman discloses a floating

barge platform (see Fig. 1) which lacks a pointed bow. The web page printout <http://members.fortunecity.com/duckworks/1999/0315/> at page 4 discusses a barge with a hull which is "totally squared off." The paper entitled "Ships Vibrations Test Model; Ships Stability Apparatus (copy enclosed) includes a photograph of a model of a barge with a non-pointed bow." Thus, it is submitted that the official notice with respect to this claim limitation is in error and the alleged notice of fact is not considered to be common knowledge or well-known in the art. The allegedly noticed fact is not considered to be common knowledge or well-known in the art due to these contrary disclosures. A reference supporting the alleged Official notice in this regard is requested.

With respect to the ramp length limitation, the attached web page printout <http://avstop.com/Seaplane/50/ch4.html> discloses a wood plank platform for use with a shoreline facility having a length of 15-20 feet. The attached web page printout available at <http://www.maritimesales.com/PAC10.htm> discloses (at page 6) a ramp having a length of 14 meters. Thus, it is submitted that the official notice with respect to this claim limitation is in error and the alleged notice of fact is not considered to be common knowledge or well-known in the art. The allegedly noticed fact is not considered to be common knowledge or well-known in the art due to these contrary disclosures. A reference supporting the alleged Official notice in this regard is requested.

Thus, it is submitted that Applicant has clearly pointed out the errors in the alleged official notice. The position in the final Office action, that the "old and well-known" statements are considered to be admitted prior art, is respectfully traversed.


It is hoped that the Office will appreciate that traversal of official notice and request for documentary evidence thereof is not submitted merely to create additional hurdles during examination. Instead, the request for specific prior art references is provided so that the Applicant may have an opportunity to study any prior art references in detail, analyze the relevant disclosure in its true context, and compare those disclosures to the other cited art to determine whether one of ordinary skill in the art would be motivated to combine the references, determine whether the combination is reasonable and feasible, etc.

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Thus, in sum, in view of the foregoing it is submitted that the claims define over the cited references and that the application is in a condition for allowance, and a formal notice thereof is requested.

The Commissioner is hereby authorized to charge any additional fees which may be required by this paper, or to credit any overpayment to Deposit Account 20-0809. Applicant hereby authorizes the Commissioner under 37 C.F.R. §1.136(a)(3) to treat any paper that is filed in this application which requires an extension of time as incorporating a request for such an extension.

Respectfully submitted,



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